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SUPREME COURT, U.S.

NO. 82-5279

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH COURT

DONALD V. MORANO,
Attorney

1231 Jarvis Avenue
Chicago, Illinois 60626
(312) 761-6201

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No.

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

QUESTION

Whether an employee of a community-based, non-profit corporation, under contract with a city to administer a Community Development Block grant received from the U.S. Department of Housing and Urban Development (HUD) is a "public official" according to the federal bribery statute, 18 U.S.C. 201.*

*In addition to petitioner Arthur Dixson, James Lee Hinton was an appellant in the United States Court of Appeals for the Seventh Circuit.

TABLE OF CONTENTS

Table of Authorities.....2
Opinion Below.....3
Jurisdiction.....3
Statute Involved.....3
Statement.....3
Reasons For Granting The Writ.....5
Conclusion.....10
Appendix A.....1A-10A
Appendix B.....1B

TABLE OF AUTHORITIES

CASES

Rewis v. United States, 401 U.S. 808, 812 (1971) - 7, 9, 10

Slater v. United States, 562 F.2d 58 (1st Cir. 1976) - 6, 7

United States v. Del Toro, 513 F.2d 656 (2d Cir.) cert. denied, 423 U.S. 826 (1975) - 5, 6, 7, 8, 9

United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1981) 6, 7, 8

United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976) - 5, 7

United States v. Mosley, 659 F.2d 812 (7th Cir. 1981) - 4, 8, 9

STATUTES

18 U.S.C. 201 - 3, 5, 6, 7, 8, 9
29 U.S.C. 801-822 - 4
42 U.S.C. 5301-5317 - 4

REGULATIONS

24 C.F.R. 570 (1980) - 5

LEGISLATIVE HISTORY

Senate Report No. 93-693 (1974) - 6
1974 U.S. Code Cong. & Ad. News 4273 - 6

OPINION BELOW

The slip opinion of the court of appeals is provided in Appendix A, pp. 1A-10A.

JURISDICTION

The judgment of the court of appeals (Appendix B, p. 1B) was entered on July 8, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 201, the federal bribery statute (18 U.S.C.), provides in pertinent part:

> (c) Whoever, being a public official or person selected to be a public official, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives, or agrees to receive anything of value for himself or for any other person or entity, in return for:
> (1) being influenced in his performance of any official act; or
> (2) being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or
> (3) being induced to do or omit to do any act in violation of his official duty. . . .
>
> (a) For the purpose of this section:
> "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency or branch of Government thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror. . . .
> "official act" means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public offical, in his official capacity, or in his place of trust or profit.

STATEMENT

After a jury trial in the United States District Court for the Central District of Illinois, petitioner was convicted on nine counts of violating the federal bribery statute, 18 U.S.C. 201(c) (1976). This conviction was based

on evidence that petitioner, while executive director of United Neighborhood Incorporated (UNI), received kickbacks from housing contractors in exchange for awarding contracts to them (App. A, pp. 2A-3A). The court denied petitioner's pre-trial, trial, and post-trial motions (R. 24, Tr. 261-62, R. 46, respectively), because it rejected his contention that as an employee of UNI he was not a "public official" under Section 201.

1. During 1979 and 1980, the City of Peoria received a total of more than $1 million via a Community Development Block grant and a Federal Metro Reallocation grant from the U.S. Department of Housing and Urban Development (HUD) (App. A, p. 2A) to rehabilitate homes in a depressed area of the city (Tr. 123). [Both grants are governed by the Housing and Community Development Act of 1974, 42 U.S.C. 5301-5317 (App. A, p. 2A n.1)]. UNI entered into a contract with the city to administer these grants (App. A, p. 1A). The city required UNI to report back to it (App. A, p. 2A). The entire management of these grants, however, was left to UNI, with checks made payable to UNI and with the city neither inspecting UNI's books nor having anything to do with issuing housing contracts (App. A, p. 2A; Tr. 124, 127). During his employment with UNI, petitioner had no contact with the city, and all his duties were those assigned to him by his superiors in UNI (Tr. 265).

2. The court of appeals affirmed petitioner's conviction. It ruled that its decision in United States v. Mosley, 659 F.2d 812 (7th Cir. 1981) was dispositive in establishing that petitioner was a public official according to Section 201 (App. A, p. 3A). In Mosley the court held that a study of the legislative history of the Comprehensive Employment and Training Programs Act (CETA), 29 U.S.C. 801-822, manifests Congress's intent that the Secretary of Labor

retain supervisory control over the programs administered locally by prime sponsors. Id. at 815. Thus, although the defendant was a state employee, he still was acting on behalf of the federal government. Id.

Applying this standard, the court found that the Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and sub-grantees responsible for administering grant funds (App. A, p. 4A). The only evidence that the court gave for such federal supervision, however, was extensive regulations governing Community Block grants [i.e., 24 C.F.R. 570 (1980)] and the right of access to all books of sub-grantees, retained by the Secretary of HUD (i.e., id., Section 570.509). (App. A, p. 5A).

The petitioner in his appeal argued, inter alia, that he could not be convicted under Section 201, according to Mosley, because the HUD program manager who had the duty of overseeing the distribution of Community Block grants to the City of Peoria during 1979 and 1980 testified that he did not know, nor was he required to know, the identity of the UNI or any other sub-grantee. The court rejected this argument, saying that it attached no significance to this testimony because it is "of little probative value in assessing the pervasiveness of federal regulation of the program" (App. A, p. 8A n.3). Thus, the "federal supervision" required for an individual to be a public official under Section 201, according to Mosley, was attenuated to mean "subject to pervasive federal regulation."

REASONS FOR GRANTING THE WRIT

The court's holding is in direct conflict with the Second Circuit in United States v. Del Toro, 513 F.2d 656 (2d Cir.), cert. denied, 423 U.S. 826 (1975) and United States v. Loschiavo, 531 F.2d 659 (2d Cir. 1976), and dicta

in United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1981) and Slater v. United States, 562 F.2d 58 (1st Cir. 1976). According to these cases, even if petitioner had been an employee of the City of Peoria, he would not qualify as a "public official" under Section 201. A fortiori, these circuits would find, by strict logical implication, that petitioner, who had no contact or dealings whatsoever with the City of Peoria during his employement with UNI, was not a "public official" according to Section 201.

In the instant case, the court acknowledged that the Housing and Community Development Act of 1974 "consolidated into one program several community development programs including the Model Cities program at issue in Loschiavo and Del Toro. . ." (App. A, p. 4A). It argued, however, that federal involvement in the Community Block Grant program was significantly more extensive that it had been under the Model Cities program, even though Senate Report No. 93-693, which it cited (App. A, p. 5A), states that this new block grant program of federal assistance to local communities incorporated many features of the Administration's revenue sharing Better Communitites Act and guaranteed to local communities a two-year federal cycle, "subject only to the meeting of minimum Federal performance standards." 1974 U.S. Code Cong. & Ad. News 4273.

Even conceding, however, that the Community Block Grant program of 1974, the successor to the Model Cities program, bespeaks greater federal regulation than its predecessor, still the court's decision contradicts these cited cases. In Del Toro, 513 F. 2d 656, the Second Circuit Court of Appeals held that an assistant administrator of a federally funded Model Cities program did not fall within the statutory definition of "public official" because he was employed by the city in a program administered through local agencies, and, therefore, was not acting on behalf of the

federal government as required by Section 201(c). Id. at 662. "He was a city employee, carrying out a task delegated to him by his superior, another city employee." Id. The court held that a narrow construction of "public official" was mandated to avoid altering sensitive federal-state relations, in the absence of Congress's unambiguous intention to do so, and to observe the requirement of resolving any ambiguity in criminal statutes in favor of the defendant. Id., citing Rewis v. United States, 401 U.S. 808, 812 (1971).

In Loschiavo, 531 F. 2d 659, a case involving the same official as in Del Toro, the court specified that the test for determining whether a particular individual is a "public official" under Section 201 is not the type of public project or the amount of federal funding but "the character and attributes of the individual's employment relationship, if any, with the federal government." Id. at 661. The court suggested one practical way of making this determination was whether any federal agency has the power to hire or fire the individual in question. Id.

In Hollingshead, 672 F.2d at 753, the Ninth Circuit Court of Appeals accepted the Second Circuit test for determining whether a particular individual constitutes a "public official" under Section 201 -- namely, "the character and attributes of [the person's] . . . employment relationship with the federal government." The court noted that in Loschiavo and Del Toro the city official never dealt directly with HUD since his tasks were delegated to him by another city employee; consequently, he was not a public official under Section 201.

In Slater, 562 F.2d at 61, while affirming appellant's conviction under 41 U.S.C. 51-54, the Anti-Kickback Act, the First Circuit Court of Appeals cited Del Toro for the proposition that "it is doubtful that the

federal laws against bribery and extortion, 18 U.S.C. 201 and 872, can be applied to Model Cities employees."

In the instant case, the court followed Mosley, 659 F.2d at 815-16, and ruled that "public official" must be given a broad construction in Section 201 to fulfill Congress's intention of protecting the public from the evil of corruption in public service (App. A, p. 6A). By implication it rejected the Second Circuit standard for determining whether an individual serves as a public official and held that petitioner's employment by the state did not preclude a determination that he was acting on behalf of the United States (App. A, p. 6A). Petitioner was, of course, neither an employee of the State of Illinois nor the City of Peoria but an employee of UNI, a non-profit corporation under contract with the city.

According to the Second Circuit and dicta of the First and Ninth Circuits, petitioner would not qualify as a public official if he had been a state or city official. A fortiori, the court's holding that he was a public official under the statute contradicts these other circuits. Applying the test of Del Toro, 513 F.2d at 661, no federal agency had the power to fire or hire petitioner. Applying the test of Hollingshead, 672 at 754, petitioner never dealt directly with HUD nor even the City of Peoria but solely with his superiors in UNI.

1. Unless this Court grants petitioner's motion for a writ of certiorari, the clear and irreconcilable conflict between the circuits will allow some individuals to be punished for conduct for which others will go free. Such inconsistency in the interpretation of Section 201 violates principles of fundamental fairness, equal protection, and due process. Also, because this statute potentially affects such a large number of individuals, it is urgent that this court resolve the conflict between the circuits.

2. The court's definition of who constitutes a public official under Section 201 is ambiguous and, therefore, violates the constitutional requirement that criminal statutes provide adequate notice. First, the court says that petitioner is a public official because of substantial federal supervision over cities and sub-grantees, which was intended by Congress and specified in the Housing and Community Development Act of 1974 (App. A, p. 4A). The court, however, ruled that this requirement of substantial federal supervision was met by "the pervasiveness of federal regulation of the program," and it said it gave no significance to the testimony of the HUD official who administered the Community Development grant in question that he neither knew of, nor had a duty to know, the identity of UNI, or any other sub-grantee (App. A, p. 8A n.3).

In another place, the court stated that petitioner was a public official because his salary and the entire cost of the program were funded by the federal government for federal objectives (App. A, p. 6A). Finally, the court ratified the broad interpretation it gave to Section 201 in Mosley (App. A, p. 6A). It found petitioner a public official because, as a federal agent, he had discretion to administer federal funds (App. A, p. 6A) and had the authority and power to influence or control the dispersal of public funds (App. A, p. 8A).

3. This Court should grant petitioner's motion for a writ of certiorari to determine whether Congress intended, when it passed Section 201, to give federal courts criminal jurisdiction over cases that heretofore have been left to the states. According to Del Toro, 513 F.2d at 662, Section 201 must be given a narrow construction because "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity." Rewis v. United States, 401 U.S. at

812. Because, however, the court has construed "federal supervision" to mean "federal regulation" and virtually any time the federal government disperses funds it also provides relevant regulations, the court's expansive construction of Section 201 in effect enables U.S. attorneys to prosecute any person who is alleged to have committed fraud in handling federal funds (e.g., state, city and local governmental employees, building contractors, pharmacists, physicians, and nursing home personnel).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Donald V. Morano

Donald V. Morano
Attorney for Petitioner
Arthur Dixson

1231 Jarvis Avenue
Chicago, Illinois 60626
(312) 761-6201

In the

United States Court of Appeals

For the Seventh Circuit

Nos. 81-2206 and 81-2207

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JAMES LEE HINTON and ARTHUR DIXSON,

Defendants-Appellants.

Appeal from the United States District Court for the Central District of Illinois, Peoria Division.
No. 81-CR-10007—Robert D. Morgan, *Judge.*

ARGUED FEBRUARY 9, 1982—DECIDED JULY 8, 1982

Before PELL, *Circuit Judge,* FAIRCHILD, *Senior Circuit Judge,* and ESCHBACH, *Circuit Judge.*

PELL, *Circuit Judge.* The appellants, Arthur Dixson and James Lee Hinton, were found guilty by a jury of violating 18 U.S.C. § 201(c)(1) and (2) by soliciting money in exchange for the award of housing rehabilitation contracts funded under the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301-5320 (Supp. III 1979) (the Act). Dixson and Hinton were, respectively, the Executive Director and Housing Rehabilitation Coordinator of a community-based, nonprofit corporation called United Neighborhoods, Inc. (UNI). Pursuant to the Act, UNI had entered into a contract with the city of Peoria to administer federal funds awarded to Peoria under a Community Development

Block Grant and a Federal Metro Reallocation Grant from the United States Department of Housing and Urban Development (HUD).[1] The Community Development Block Grant program administered by UNI was entirely sponsored by federal funds, which paid UNI's costs as well as the salaries of its employees. The primary issue in these appeals is whether Dixson and Hinton were "public officials" within the meaning of 18 U.S.C. § 201(c) (1976).

During 1979 and 1980, the city of Peoria received a Community Development Block Grant and Metro Reallocation Grant from HUD. The purpose of these grants was community development, including the rehabilitation of residential structures. In accordance with the Act and regulations pursuant to the Act, the city contracted with UNI to administer the grant funds. For housing that met the statutory and regulatory criteria for the funds, UNI had the responsibility of soliciting bids from contractors to perform the housing rehabilitation. After the receipt of bids, the Housing Committee of UNI was responsible for awarding the contract to the successful bidder. There was testimony, however, from several witnesses that contracts were awarded without obtaining the approval of the Housing Committee. Successful bidders were paid for their work by UNI from the grant funds it had received from the city, which had previously received the funds from HUD. UNI had to account to the city for the expenditure of the federal funds, and the city, in turn, was responsible for accounting to HUD for all funds it had received.

Ora Logsdon, a contractor who received several housing contracts from UNI, was the primary Government witness against Dixson and Hinton. He testified that he had received rehabilitation contracts for ten houses from UNI pursuant to an agreement with Dixson and

[1] Both Community Development Block grants and Federal Metro Reallocation grants are governed by the Housing and Community Development Act of 1974. These grant programs shall be referred to collectively as the Community Development Block Grant program.

Hinton to pay them 10% of the amount of each contract. He said he would pay Dixson and Hinton their 10% after cashing the checks he had received for his work from UNI.

Gerald Lilly, another contractor, testified that he had been told by Dixson that he should pay 10% of the contract price in order to receive a rehabilitation contract. At one point Lilly met with Dixson and Hinton who helped him prepare his bids. Hinton told Lilly on which houses to bid and recommended that the amount of one bid be lowered. Hinton also reassured Lilly that submitting the bids was just a formality. Subsequently Lilly paid Dixson when he received his first check from UNI.

I. Hinton and Dixson as "Public Officials"

Section 201(c)(1) of 18 U.S.C. prohibits any "public official" from directly or indirectly asking, demanding, soliciting, accepting, or receiving anything of value in return for being influenced in the performance of any official act. 18 U.S.C. § 201(c)(1) (1976). Section 201(a) defines "public official" to include any person "acting for or on behalf of the United States or any department, agency or branch of Government thereof." 18 U.S.C. § 201(a) (1976). Both appellants, relying primarily on the decisions of the Second Circuit in *United States v. Loschiavo*, 531 F.2d 659 (2d Cir. 1976), and *United States v. Del Toro*, 513 F.2d 656 (2d Cir.), *cert. denied*, 423 U.S. 826 (1975), assert that they cannot be considered "public officials" because they were not acting for or on behalf of the United States.

This court's recent decision in *United States v. Mosley*, 659 F.2d 812 (7th Cir. 1981), is dispositive of the arguments advanced by the appellants in support of their position that they were not acting for or on behalf of the United States. In *Mosley*, we distinguished *Loschiavo* and *Del Toro* as involving a separate statutory scheme (the "Model Cities" program) from that in *Mosley* (the Comprehensive Employment and Training or "CETA" program). In light of the statute, regulations, and legis-

lative history of the CETA program, we concluded that federal government involvement in the CETA program was more substantial than that in the Model Cities program, to the extent that Mosley was acting for or on behalf of the United States in the CETA program. This conclusion was buttressed by review of Mosley's position within the federal program. *Id.* at 814-15.

The present case involves a different statutory scheme from that in *Mosley*, and, for that matter, from that in *Loschiavo* and *Del Toro*. Although the Act consolidated into one program several community development programs including the Model Cities program at issue in *Loschiavo* and *Del Toro*, federal involvement in the Community Development Block Grant program differs significantly from what it had been in the Model Cities program. The Housing and Community Development Act of 1974 provides for substantial federal supervision over the cities and all sub-grantees responsible for local distribution of grant funds. Two of the stated objectives of the Act are "substantial expansion of the greater continuity in the scope and level of Federal assistance" and the "development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid." 42 U.S.C. § 5301(b)(2) and (d) (Supp. III 1979).

In order for an applicant to receive a grant, the applicant must submit to the Secretary of HUD, *inter alia*, a three-year comprehensive community development plan, a detailed program of implementation, and a housing assistance plan, that must be approved by the Secretary prior to funding. *Id.* § 5304. The activities which may be performed under a Community Development Block Grant program are circumscribed in great detail. *Id.* § 5305. In addition, annual performance reports must be submitted with an assessment of compliance with the objectives of the Act. The Secretary is also directed to make reviews and audits of the grantees' programs on at least an annual basis to determine whether the grantees are meeting the federal standards and to adjust federal funds in accordance with such findings. *Id.*

§ 5304(d). The Secretary reserves the right to audit the financial transactions of fund recipients. *Id.* § 5504(g).

Pursuant to the statute, the Secretary of HUD has issued extensive regulations governing Community Development Block grants. 24 C.F.R. Part 570 (1981). These regulations govern in detail grant procedures, as well as program design, management, and administration. Specifically, section 570.204 governs eligible activities by private non-profit entities such as UNI. 24 C.F.R. § 570.204 (1981). Section 570.507 provides that OMB Circular No. A-102 governs the procurement of materials and services funded under the program and procured by subgrantees and subrecipients. *Id.* § 570.507. Section 570.509 reserves to the Secretary a right of access to all books, accounts, records, reports, files and other papers or property of subgrantees for the purpose of making surveys, audits, examinations, excerpts, and transcripts. *Id.* § 570.509. Section 570.900 sets forth the performance standards by which all recipients of funds are to be evaluated by the Secretary, the reports to be submitted by recipients, and the records to be maintained by recipients. *Id.* § 570.900-.913.

Although the purpose of the Act was, in part, to allow flexibility to local units in administering the grants, the legislative history demonstrates that the Act was primarily intended to improve federal supervision over federal housing and urban development programs. Senate Report No. 93-693 notes that the consolidation of community development programs was designed to produce a single, more comprehensive community development program "primarily to insure that Federal funds would be used with a priority" to meet the objectives of the Act. *S. Rep. No.* 93-693, 93d Cong., 2d Sess. 2, *reprinted in* 1974 *U.S. Code Cong. & Ad. News* 4273, 4274. Under the Community Development Block Grant program, as under the CETA program in *Mosley*, the federal funds flow from the local sponsor to the recipient of a contract rather than directly from the agency. Nevertheless, it is clear from the legislative history of the Act, as it was in the legislative history of CETA, that the purpose of this procedure was to streamline the funding process rather

than to abdicate federal control over the substantive aspects of the program. Thus, the statute, regulations, and legislative history manifest Congress' intent to promote efficient, effective federal supervision over the Community Development Block Grant program. The extent of federal involvement is such that Dixson and Hinton were acting on behalf of the United States in their administration of the federal funds under the program.

Analysis of Dixson's and Hinton's positions within the program buttresses our conclusion that they were "public officials" within the meaning of § 201(a). The salaries of each and the entire cost of the program they administered were funded by the federal government for federal objectives. Their employment by the state does not preclude a determination that they were acting on behalf of the United States. *See, e.g., United States v. Mosley*, 659 F.2d 812 (7th Cir. 1981); *United States v. Kirby*, 587 F.2d 876 (7th Cir. 1978); *United States v. Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976); *United States v. Gallegos*, 510 F. Supp. 1112 (D.N.M. 1981). Dixson, as Executive Director of UNI, and Hinton, as UNI's Housing Rehabilitation Coordinator, were acting as federal agents in the sense of having discretion in administering the expenditure of federal funds. In light of the broad interpretation to be accorded section 201, *United States v. Mosley*, 659 F.2d at 816, we conclude that Dixson and Hinton were acting on behalf of the United States and, therefore, were "public officials."

The appellants attach significance to testimony that only the Housing Committee could award contracts. However, there was also evidence Dixson and Hinton had awarded contracts without the approval of the Housing Committee. Indeed, apparently neither in dealing with the contractors displayed any aspect of hypobulia. Viewing the evidence in the light most favorable to the Government, *Glasser v. United States*, 315 U.S. 60, 80 (1942), the contractors favored by the appellants were successful in their bids, so that Dixson and Hinton

were in effect authorizing the expenditure of federal funds themselves. Even if they had not been able to award contracts on their own, we question whether the requirement of Housing Committee approval alone would so attenuate the appellants' authority to administer federal funds as to preclude their status as public officials. *See United States v. Mosley*, 659 F.2d at 816.

The authority of the appellants in relation to the federal government is closely analogous to the authority of the defendant in *United States v. Griffin*, 401 F. Supp. 1222 (S.D. Ind. 1975), *aff'd without opinion sub nom. United States v. Metro Management Corp.*, 541 F.2d 284 (7th Cir. 1976), and the appellants' attempts to distinguish that case are unpersuasive. In *Griffin*, the defendant was the principal officer and agent of a corporation awarded an area management broker contract by HUD. The corporation was responsible for soliciting competitive bids on housing contracts under a federal program. The corporation then submitted the three lowest bids to HUD with a recommendation that the lowest bid be accepted. Ordinarily the lowest bidder was awarded the contract if the bid met the federal criteria and estimate set by the area broker. The corporation received payment from HUD for each contract issued. As in the instant case, the defendant in *Griffin* solicited a 10% kickback for his favoritism in accepting bids although he alone did not have technical authority to award contracts. As the district court stated in finding the defendant Griffin, as well as the corporation, to be persons "acting for or on behalf of the United States":

> While the low bidder among those from which the area broker solicited bids was not guaranteed of being awarded the contract by HUD, testimony was presented that such low bidder was in fact awarded the job at least 95% of the time. Thus the Court feels that the defendants were placed in a position of responsibility and were enabled to exercise discretion to act for and on behalf of HUD in operating the system to provide for the rehabilitation of HUD properties. The mere fact that defendant Jack Griffin, as President of MMC, is an em-

ployee of the corporation and not of the United States does not prevent him from acting as a "public official" as defined in 18 U.S.C. § 201(a).

401 F. Supp. at 1230. Similarly, Dixson and Hinton had the authority and power to influence or control the dispersal of federal funds on behalf of HUD.[2] Accordingly, Hinton and Dixson qualify as "public officials" within the meaning of section 201(c).[3]

II. Sufficiency of the Evidence as to Hinton

Hinton's remaining objections on appeal may be briefly addressed. Hinton claims that he was entitled to acquittal because there was insufficient evidence on all relevant counts for the jury to find that Hinton awarded any contracts, or that he accepted or solicited a bribe from Gerald Lilly as alleged in Count X of the indictment. Both objections are without merit.

On appeal the evidence must be viewed in the light most favorable to the Government, together with all reasonable inferences. As previously pointed out, the testimony of Ora Logsdon was that he had been awarded contracts which, according to other witnesses' testimony,

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[2] In emphasizing the extent to which contracts were actually awarded based on Hinton's and Dixson's actions, we do not intend to suggest that the solicitation of a bribe actually had to have resulted in the award of a contract for a violation of section 201 to have occurred. *E.g., United States v. Arroyo*, 581 F.2d 649, 654 n.10 (7th Cir. 1978), *cert. denied*, 439 U.S. 1069 (1979). The frequency with which the appellants effectuated the solicited result relates to their control and discretion over the funds and, thus, to the issue of whether they were acting on behalf of the United States in their positions.

[3] We attach no significance to the testimony of James Barnes, program manager of the Chicago area office of HUD, that he was not specifically aware of UNI and was not required to be aware of its existence. Mr. Barnes' personal knowledge of a specific subgrantee in a regional area is of little probative value in assessing the pervasiveness of federal regulation of the program.

had not been awarded by the Housing Committee. Logsdon testified that he had been awarded ten contracts, and that Hinton and Dixson had agreed to award him all the contracts he could handle if he paid them kickbacks. Oscar Penn, a member of the Housing Committee, testified that housing rehabilitation contracts were awarded that had not been approved by the Committee. As to Count X of the indictment,[4] there was testimony that Hinton, with assistance from Dixson, told Lilly on which houses to bid, that one bid had to be lower than he had originally made it, and that the bids were simply a formality. Lilly went to UNI's office with $2,000.00 from his first check from UNI, and paid the money to Dixson who was in the office at that time. This evidence, and the inferences which can be drawn therefrom, were sufficient to sustain the jury verdict as to Hinton on all counts.

III. The Cross-Examination of Ora Logsdon

Hinton objects to the district court's refusal to allow him cross-examination of Logsdon for impeachment purposes based on Logsdon's purported misappropriation of certain UNI funds. Generally a trial court has wide discretion to limit cross-examination, with the standard on review for the adequacy of cross-examination on bias or motive being whether the jury had sufficient information to make a discriminating appraisal of the witness's bias or motive. *United States v. Fitzgerald*, 579 F.2d 1014 (7th Cir.), *cert. denied*, 439 U.S. 1002 (1978).

Logsdon admitted to bribing Hinton and Dixson. He was questioned in cross-examination about law enforce-

[4] Count X alone was predicated on 18 U.S.C. § 201(c)(1) *and* (2). Section 201(c)(2) prohibits a public official from, directly or indirectly, asking, demanding, exacting, soliciting, seeking, accepting, receiving or agreeing to receive anything of value in return for being influenced to commit *or aid in committing*, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States. 18 U.S.C. § 201(c)(2) (1976) (emphasis added).

ment officers having sought him out for information, about denying any involvement in the bribery to the officers, about his first interview by law enforcement officials in his attorney's office, and about owing money to the Government for unpaid taxes. The cross-examination made it clear that Logsdon was a party to the illegal transaction and that he had been sought out by law enforcement officials. This cross-examination was sufficient to allow the jury to assess adequately Logsdon's bias or motive so that the district court's limitation on further cross-examination was not an abuse of discretion.

Finally, Hinton appears to suggest that the indictment was defective because it failed to allege how Hinton was acting for or on behalf of the United States. However, each count of the indictment alleged that Hinton and Dixson, as employees of UNI, were involved in accepting bids and awarding and administering contracts between UNI and contractors for the rehabilitation of housing under grant funds from HUD, a department of the Government of the United States, to the city of Peoria, pursuant to a contract between UNI and the city. These allegations of the indictment were clearly sufficient to apprise Hinton of the nature and elements of the charge as set forth in *Hamling v. United States*, 418 U.S. 87, 117 (1974).

For the reasons stated herein the judgment of the district court is as to both appellants on all counts

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

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JUDGMENT — ORAL ARGUMENT

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 8, 19 82

Before

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. THOMAS E. FAIRCHILD, Senior Circuit Judge

Hon. JESSE E. ESCHBACH, Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Nos. 81-2206 and 81-2207 vs.

JAMES LEE HINTON and ARTHUR DIXSON,
Defendants-Appellants.

Appeals from the United States District Court for the Central District of Illinois, Peoria Division.
No. 81-CR-10007
Robert D. Morgan, Judge

This cause was heard on the record from the United States District Court for the Central District of Illinois, Peoria Division, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED as to both appellants on all counts, in accordance with the opinion of this Court filed this date.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

RECEIVED
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SUPREME COURT, U.S.

No. 82-5279

UNITED STATES OF AMERICA

v.

ARTHUR DIXSON, PETITIONER

MOTION TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 46 of this Court, I, Donald V. Morano, move for leave to proceed in forma pauperis as counsel for Arthur Dixson in his petition for a writ of certiorari. I have attached a photostatic copy of my appointment as counsel for petitioner in his appeal before the Seventh Circuit Court of Appeals.

Donald V. Morano

Donald V. Morano
Attorney for Petitioner
Arthur Dixson

1231 Jarvis Avenue
Chicago, Illinois 60626
(312) 761-6201

RECEIVED
AUG 24 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

82-5279

AFFIDAVIT OF SERVICE

TO: Solicitor General
Department of Justice
Washington, D.C. 20530

I, Donald V. Morano, being duly sworn on oath, depose and state that I served the foregoing Petition for a Writ of Certiorari, in accordance with Rule 28(c), to the above-mentioned individual at his respective address by depositing in the United States mail at 55 East Monroe Street, Chicago, Illinois, 60603, a true and correct copy thereof in a sealed envelope, postage prepaid, on the 20th day of August, 1982.

Donald V. Morano

Subscribed and sworn to
before me this 20th day
of August, 1982.

Barbara M. Bost
Notary Public

CJA 30 Appointment & Voucher for Compensation 21*4 Approved by U.S. Treasury - A.O.

APPOINTMENT AND AUTHORITY TO PAY [illegible]

IN U.S. STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF: UNITED STATES OF AMERICA / ARTHUR DIXSON

FOR: SEVENTH CIRCUIT AT CHICAGO, ILLINOIS

LOCATION NUMBER: 13001

PROCEEDING (describe briefly): Appeal

CHARGE/OFFENSE (describe if applicable & check box →) ☒ Felony ☐ Misdemeanor

U.S. or other code citation: Title 18:201(c), Bribery

1 ☐ Defendant – Adult
2 ☐ Defendant – Juvenile
3 ☒ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify Below)

DOCKET NUMBERS: Magistrate: / District Court: 81-CR-10007 / Court of Appeals: 81-2207

VOUCHER NUMBER: 509616

PERSON REPRESENTED (Show full name & status, & check box →)

Name already appears as ☐ PI or as ☒ DI above

COURT ORDER

☒ APPOINTING COUNSEL
☐ RATIFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (due appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization printed here and below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate: 08-06-81 (Date)

OR BY ORDER OF THE COURT: [signature] (Clerk or Deputy)

CERTIFICATIONS OF ATTORNEY/PAYEE

For compensation on and of this ☐ Yes ☐ No
Statement for work in this case
been previously applied for or re ☐ Yes ☐ No
ceived
(If Yes, how much were you paid? $)
Do you expect to receive any other compensation for this representation? ☐ Yes ☐ No
If Yes, how much? $

I SWEAR & AFFIRM THE TRUTH & CORRECTNESS OF ABOVE STATEMENTS

SIGNATURE OF ATTORNEY/PAYEE: DATE:

FOR SERVICES & EXPENSES VOUCHERED BELOW

*	TIME SPENT	DATES	HOURS	AMOUNT
I	IN OPEN COURT			RATE PER HR
	A. ARRAIGNMENT &/OR PLEA			$
	B. MOTIONS & REQUESTS			
	C. BAIL HEARINGS			
	D. SENTENCE HEARINGS			
	E. TRIAL			
	F. REVOCATION HEARINGS			
	G. APPEALS COURT			
	H. OTHER (Specify below)			
	TOTAL "IN COURT" HOURS			$
II	OUT OF COURT			
	A. INTERVIEWS & CONFERENCES			
	B. OBTAINING & REVIEWING RECORDS			
	C. LEGAL RESEARCH & BRIEF WRITING			
	D. INVESTIGATIVE & OTHER WORK (Specify)			
	E. TRAVEL TIME (during normal office hours only). (1) TO & FROM COURT (round trips under 1 hr not allowed) (2) OTHER TRAVEL TIME (Specify)			
	TOTAL "OUT OF COURT" HOURS			$
	TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			$

III. ITEMIZED EXPENSES (Specify, per instruction sheet) — AMT. PER ITEM

	$

TOTAL ITEMIZED EXPENSES $
TOTAL COMPENSATION & EXPENSES $

* If more space is needed use additional blank sheets

DEDUCT AMOUNTS PREVIOUSLY PAID IF APPLICABLE
NET AMOUNT CLAIMED $

SIGNATURE OF PAYEE / JUDGE / MAGISTRATE — DATE

AMOUNT CERTIFIED/APPROVED $

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS — Payment in excess of statutory limitation approved under 18 USC 3006A(d)(3) — DATE — $

COUNSEL: ☒ IS A PRIVATE ATTORNEY
☐ IS FURNISHED BY:
☐ COMMUNITY DEFENDER ORGANIZATION
☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO. 312/427-2737

SOCIAL SECURITY NO. 028-26-7557

ATTORNEY / ORGANIZATION / ADDRESS:
Mr. Donald Morano
John Marshall Law School
315 South Plymouth Court
Chicago, IL
ZIP CODE 60604

VOUCHER NUMBER: 509616

Has defendant paid any money to you since his arrest, or to your knowledge, to anyone else, in connection with the offense for which you were appointed to defend him? If s., give details.

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED